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IN THE
SUPREME COURT of the UNITED STATES
OCTOBER TERM, 1996

ROCKY MOUNTAIN CONFERENCE OF THE
UNITED METHODIST CHURCH,
A COLORADO NON-PROFIT CORPORATION,
Petitioner,

v.

DIANNE R. WINKLER,
Respondent.

Petition for a Writ of Certiorari to the Supreme Court of Colorado

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PETITION FOR A WRIT OF CERTIORARI

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8 pp

QUESTIONS PRESENTED

1. Is a church when hiring, supervising, disciplining and discharging clergy inextricable involved in religious activity protected by the First Amendment of the United States Constitution or is the Church exposed to tort claims while doing so?

2. Where no compelling interest is identified to justify the burden on a religious organizations practice of religion may tort claims be allowed?

PARTIES

The parties to this action are Petitioner, **Rocky Mountain Conference of the United Methodist Church**, a Colorado non-profit corporation, and Respondent, **Dianne R. Winkler.** Glenn Chambers, retired clergy member of the Rocky Mountain Conference of the United Methodist Church, was a party in the underlying action but is not a party in this petition brought by Rocky Mountain Conference of the United Methodist Church.

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OPINIONS DELIVERED BELOW

The opinion from which the Rocky Mountain Conference of the United Methodist Church files this Petition for Writ of Certiorari to the United States Supreme Court is issued by the Colorado Court of Appeals at *Winkler vs. Chambers,* P.2d. (Colo. App. 1995). The Colorado Supreme Court denied a petition for writ of certiorari on September 3, 1996. The text of the opinion and the denial order are attached in Appendices A at pgs. 1a to 20a and B at pgs. 21a to 22a, respectfully.

JURISDICTION

The jurisdiction of this Court is pursuant to 28 U.S.C. §125(3). The Colorado Supreme Court issued a denial of a Petition for Writ of Certiorari on September 3, 1996.

CONSTITUTIONAL PROVISION INVOLVED

The first statement in the First Amendment of the United States Constitution states:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . "

STATEMENT OF THE CASE

In January of 1993, Dianne R. Winkler brought suit against Rev. Glenn Chambers, Grace United Methodist Church, and the Rocky Mountain Conference of the United Methodist Church on allegations of sexual harassment by Rev. Chambers from 1990 to 1992. The Grace Church settled out before trial for $23,500. On January 26, 1994 after a two-week trial, a jury returned a verdict against Rev. Chambers for breach of fiduciary duty in the sum of $57,350 and against the Rocky Mountain Conference for

negligent hiring and supervision in the sum of $95,853 and for breach of fiduciary duty in the sum of $10,651.

On negligent hiring and supervision, Dianne Winkler's "evidence" was to second guess the Conference's handling of information received over the years of Rev. Chambers' alcohol use and circumstances surrounding his first marriage breakup. On the fiduciary duty claim, her "evidence" was to second guess the Conference's following the Methodist Book of Discipline on a grievance against Rev. Chambers and claim a "fiduciary relationship" was created during the Rev. Chambers' disciplinary process were she was then permitted to speculate how the Conference failed to provide her own self-defined idea of what should have been done for her.

The History of Rev. Chambers' Engagement as a Clergy With the Rocky Mountain Conference

Rev. Glenn Chambers became a clergy member of the Rocky Mountain Conference of the United Methodist Church in 1965, after serving as clergy in a United Methodist Conference in west Texas from 1953 to 1965. He obtained his BA degree in 1953 from McMurray College and his Doctor of Divinity from Perkins School of Theology at Southern Methodist University in 1959. He was appointed to serve in the Methodist Church, Glenwood Springs, Colorado from June of 1965 to June of 1968 and at the St. Paul United Methodist Church, Colorado Springs, Colorado from 1968 to 1973. From 1973 to 1979 he served as one of the six district superintendents of the Rocky Mountain Conference assigned to the Pueblo, Colorado District at the request of Bishop Marvin Wheatley. In 1979 he was appointed to Grace United Methodist Church in Denver, Colorado after his maximum allowed six-year service as district superintendent.

In 1972 Bishop Marvin Stuart, then Bishop of the Rocky Mountain Conference (1964-1972), requested an inquiry into the break up of Rev. Chambers' first marriage as was the standard procedure under the Book of Discipline of the United

Methodist Church at the time to determine if there was any immoral conduct on the part of Rev. Chambers under the standards set in the Book of Discipline much in keeping with society's view of divorces at the time of having someone designated at fault in a marriage breakup. As a result, it was determined no immoral conduct occurred and no charges were brought against Rev. Chambers under the Book of Discipline. However, the committee of minister peers suggested Rev. Chambers and his wife should both seek "psychiatric counseling." This was based on a committee conversation with a psychiatrist, who was counseling Rev. Chambers' wife at the time but had seen Rev. Chambers on one occasion. Rev. Chambers did not attend any psychological counseling at the time and the Rocky Mountain Conference did not require him to do so. Rev. Chambers admitted for the first time during trial in this case a problem in the breakup of his first marriage on reflection was his alcohol use which he hid from the Rocky Mountain Conference.

In 1980 the second wife of Rev. Chambers, Lela Rhodes, advised Bishop Marvin Wheatley, then Bishop of the Rocky Mountain Conference (1972-1984), she believed Rev. Chambers had an alcohol use problem. Rev. Chambers had served as a district superintendent from 1973 until 1979 under Bishop Wheatley, during which period of time he was in the presence of Bishop Wheatley one week a month, many times for up to fourteen hours a day, during which time Bishop Wheatley did not, at anytime, associate alcohol with Rev. Chambers. Thus, Bishop Wheatley felt the use of alcohol by Rev. Chambers was not a factor in his performance as a member minister of the Rocky Mountain Conference. Sometime in the 1980s, District Superintendent Rev. Jim Keesey received a complaint of alcohol use by Rev. Chambers and he spoke to him at which time Rev. Chambers continued to deny his problem and stated if it was offensive to others, he would just quit. In the 1986 to 1990 time frame, the Associate Pastor at Grace United Methodist Church, Rev. Jan Munsey, whose life had been greatly affected by her parents' use of alcohol and the death of her brother from alcohol use, reported to District Superintendent Rev. Sam Day that she had

noted alcohol on Rev. Chambers' breath at the church and on one occasion had seen him go to his car and take a drink from a bottle. Rev. Day and the chairman of the Staff Parrish Relations Committee at Grace United Methodist Church, George Custard, frequently went fishing with Rev. Chambers. They arranged a fishing trip, and during this trip discussed with Rev. Chambers the reported concern of his alcohol use at the church. Again, Rev. Chambers denied his alcohol problem and responded he could stop drinking entirely. As before, there was no indication alcohol use was affecting his job performance. The Grace United Methodist Church Staff Parrish Relations Committee never brought to the Rocky Mountain Conference any further concern over alcohol use. The Grace Church Staff Parrish Relations Committee always requested the return of Rev. Chambers as its senior pastor each year for the thirteen years he was appointed to Grace Church without any expressed concern of any kind.

On March 19, 1992 District Superintendent Rev. Rush Hankins received from Carol Klein, a Grace United Methodist Church member, a written complaint alleging Rev. Chambers had sexually harassed her at Grace Church on a number of occasions since 1984. As a result, Rev. Rush Hankins and Bishop Roy Sano's, then Bishop of the Rocky Mountain Conference (1984-1992), initiated investigation into this official written complaint and the Bishop suspended Rev. Chambers' appointment at Grace Church. Rev. Rush Hankins ultimately held a meeting on April 24, 1992 at her home and invited all women with complaints about Rev. Chambers whose identify was known to Grace United Methodist Church and Carol Klein's counselor and his associates. Six women came to Rev. Rush Hankins' home and Dianne Winkler was one of these women.

Rev. Chambers had admitted to Bishop Sano and District Superintendent Rev. Rush Hankins on April 8, 1992, he had a problem with alcohol but denied sexually harassing women at anytime. He has maintained this position to present.

Rev. Chambers was immediately sent to a thirty-day alcohol treatment program and subsequently came under the care of

Dr. Jeffrey Metzner, a psychiatrist, for psychological evaluations at the request of the Rocky Mountain Conference. Just before the Annual Conference in June of 1992, Rev. Chambers was placed on a year's leave of absence because of the long process to deal with alcoholism plus the other concerns of the women. The Annual Conference in June of 1993 refused the 63-year-old Rev. Chambers' request for retirement based on 40 years in the ministry. In June of 1994 Rev. Chambers' retirement was allowed by the Annual Conference under a written agreement of severe restrictions not permitting him to hold himself out as a Methodist minister or to conduct any type of clergy functions.

One of the women who came to Rev. Rush Hankins' house for the April 1992 called meeting of women who had complaints about Rev. Chambers was Jan Place. Earlier in October of 1991, District Superintendent Rev. Rush Hankins had been contacted on the telephone by Jan Place. In the October of 1991 telephone call, Jan Place had complained Rev. Chambers was telephoning her at home, telling her he loved her and had made unwanted physical contact with her consisting of shoulder rubs and hugs. Rev. Rush Hankins explained, as required, the Book of Discipline mandate that a written complaint he made before a formal grievance process could be initiated. Jan Place declined to file an official compliant and Rev. Rush Hankins spoke with Rev. Chambers in person as requested by Jan Place. Rev. Chambers stated Jan Place's father has passed away and he had been showing her special concern because of this death. Rev. Chambers was asked not to further contact Jan Place and he did not.

Dianne Winkler, age 44, joined the Grace Church in October of 1988 with her third husband, who was a school teacher, because she was really lonely at the time. She was active in the women's group, became chairperson of the Evangelism Committee and her husband was active in the men's group. Winkler had a childhood history of sexual abuse by her uncle, a neighbor and a brother. She also had a history of severe emotional conflict with her mother in which her father had been un-supportive. Although a college graduate who obtained a high grade point

average and without children, she had been emotionally unable to handle employment since 1987. She had a pre-existing history of bulimia, depression, anxiety, emotional disorder and herpes. The herpes had caused her loss of family, friends and a job. Her husband suffers from Lupus since June of 1988 which required he stay out of sunlight, avoid stress and not fatigue. Her father passed away in 1989 and she had to help care for him during his last illness. By 1989, she felt mentally and physically tired. In January of 1990, she consulted a therapist to help her cope with her father's death and to try to overcome her phobia regarding work. She went on Prozac in January of 1990 and was under a doctor's care for her pre-existing conditions. In the spring of 1990, she started counseling with Rev. Chambers.

Diane Winkler alleges Rev. Chambers first improperly approached her in 1990 when she was alone painting a church classroom and inappropriately hugged her, kissed her hair and said he loved her. She alleges from 1990 to January of 1992, Rev. Chambers sexually harassed her on a number of occasions.

Following the meeting at District Superintendent Rev. Rush Hankins' home in April of 1992, Rev. Rush Hankins was in contact numerous times with Dianne Winkler while processing the Carol Klein complaint against Rev. Chambers, including locating a non-Methodist counselor to meet with the women who choose to hold group sessions which proved to be unsatisfactory. Rev. Sandra Stephens, a member of the Conference Joint Review Committee looking into the grievance against Rev. Chambers was designated as communication liaison with the women to keep them informed during the process. A great deal of resentment occurred in the Grace Church congregation directed at the Rocky Mountain Conference and the un-named women for the loss of Rev. Chambers. Dianne Winkler last attended Grace Church on June 12, 1992. In August of 1992, the Conference Joint Review Committee found the women's complaints "creditable." Dianne Winkler contacted a lawyer in November of 1992 and filed a lawsuit in January of 1993.

The Organization of the United Methodist Church

The United Methodist Conference operates under the Book of Discipline, which is descended from the original Book of Discipline, compiled by John Wesley, the founder of Methodism.

Within the United Methodist Church denomination, the basic operating unit is the Conference. The United States (and world) is geographically divided into a series of conferences. The Rocky Mountain Conference is a non-profit Colorado corporation which covers the states of Colorado, Utah and one-half of Wyoming. There are 256 churches and 400-plus ministers within the Conference. It is governed by a bishop, who is supported by a Cabinet consisting of six district superintendents. Each district superintendent is assigned to oversee a portion of the churches and ministers within the conference territory under the authority of the Book of Discipline. The district superintendent holds a Charge Conference in each charge/church at least once a year to review and evaluate the total mission and ministry of the church, receive reports, and adopt objectives, goals, purposes and priorities for the coming year. The district superintendent may be in contact with the ministers and churches at other times in the year on an as-needed basis for overseer responsibilities for the ministry of the pastors and churches under the Book of Discipline authority.

The clergy members of the Rocky Mountain Conference are subject to appointment by the bishop with advise of the Cabinet. The clergy person herself/himself is consulted as is the staff parrish relations committee at the local church before an appointment is made. The clergy member is considered self-employed and while a clergy member of the Rocky Mountain Conference is actually paid by the local church and subject to everyday supervision by the local church staff parrish relations committee. The "supervision" by the district superintendent under the Book of Discipline is defined as working with pastors in formulating statements of purpose for congregations in fulfilling their mission and with the staff parrish relations committee

to classify the pastors' proprieties of ministry to include observation, direct evaluation and feedback to the clergy involved.

Once a year The Discipline calls for an Annual Conference. This is a meeting held in June by the clergy members and lay persons of the Rocky Mountain Conference to review the past year and bring before the various bodies of the Rocky Mountain Conference for approval the actions taken through the year including actions on clergy membership.

The Rocky Mountain Conference does not play any part in who will be a lay member of each separate non-profit corporation church nor does it have any power to remove a lay member admitted by a church to membership. The clergy are not considered members of the individual church. The Discipline defines an internal grievance procedure for clergy, based on recognition that "Ordination and membership in an Annual Conference in The United Methodist Church is a sacred trust," and that the "qualifications and duties of local pastors . . . flow from the gospel as taught by Jesus the Christ and proclaimed by his Apostles."

The purpose of the clergy grievance procedure is " . . . the reconciliation and restoration of the person (clergy) and the strengthening of the church." If the remedial process is " . . . unfruitful, discontinuance or termination may follow." "A grievance is a written and signed statement claiming misconduct or unsatisfactory performance of ministerial duties. The person filing the grievance and the clergyperson shall be informed by the district superintendent or bishop of the process for filing the grievance and its purpose." The first step in the grievance procedure is "supervision," which is " . . . directed towards justice for and reconciliation between all parties . . . " and may include consultation with the Staff Parrish Relations Committee and mediation with " . . . trained neutral third party mediator . . . " When "supervision" does not achieve the desire results, the matter may be referred to the Joint Review Committee of the Conference's Board of Ordained Ministry.

The Board of Ordained Ministry is a standing committee of the Conference charged with enlistment, recruitment, ordination and standing of the clergy membership. The Joint Review Committee handles all complaints regarding clergy and is charged with resolution of the complaint under informal and confidential procedures. The Joint Review Committee " . . . shall guarantee that the person or persons lodging the complaint and the person against whom the complaint is lodged shall have the right to be heard." When resolution of the complaint is not achieved, the matter is referred back to the Board of Ordained Ministry. The Board of Ordained Ministry then develops a response based on the Joint Review Committee's report, to accommodate "the needs of the church and the ordained minister." It " . . . may recommend remedial action, discontinuance, leave of absence, administrative location, termination, or it may dismiss the complaint." In "rare instances," it may prefer charges to the Conference Committee on Investigation, for possible trial. The remedial action through the Cabinet and Board of Ordained Ministry shall be one or more of the following options, subject to Annual Conference review: (1) continued education, (2) leave of absence, (3) early retirement, (4) sabbatical leave, (5) honorable location, (6) surrender of ordained ministerial office, (7) personal counseling or therapy, (8) career evaluation, (9) peer support and supervision or (10) private reprimand.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S RULE OF FIRST AMENDMENT PROTECTION AGAINST INTERFERENCE WITH A CHURCH IN ITS ACTIONS INVOLVING CLERGY.

A. The Colorado Courts Have Failed to Fully Accept This Court's Prior Decisions That the Church Has Sole Authority Regarding its Clergy.

The principle that civil courts are required to accept as conclusive the decisions of the highest ecclesiastical judicatories

of a hierarchial church in religious matters involving clergy is established by the decision of this Court from *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 727-729 (1871); *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 16 (1929); *Kedroff v. St. Nicholas Cathedral of the Russian Orthodox Church,* 344 U.S. 94, 113-115, 120-121 (1952) [later opinion, sub. nom. Kresshik v. St. Nicholas Cathedral of the Russian Orthodox Church, 363 U.S. 190 (1960)]; *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 445-449 (1969); and *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 723 (1976).

The classic statement of the principle involved is the following often-quoted language from *Watson v. Jones*, 80 U.S. at 727, 729:

> "In this class of cases [hierarchical churches] we think the rule of action which should govern the courts . . . is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding upon them, in their application to the case before them . . . "
>
> " . . .
>
> "It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for."

In *Gonzalez* (280 U.S. at 16) this court phrased the principle as "Because the appointment [to a chaplaincy] is a canonical Act, it is the function of the church authorities to determine what the essential qualifications of a chaplain are and whether the candidate possesses them."

In analyzing the constitutional principles applicable to the selection and removal of clergy by hierarchical churches, this Court stated in *Kedroff* (344 U.S. at 116):

> "Freedom to select the clergy, where no improper methods of choice are proven, we think, must now be said to have federal constitutional protection as a part of the free exercise of religion against state interference."

In *Presbyterian Church In The United States* (393 U.S. at 667) this Court stated as to the constitutional principle involved, "The First Amendment prohibits a state from employing religious organizations as an arm of the civil judiciary to perform the function of interpreting and applying state standards."

In *Serbian Orthodox Diocese* (426 U.S. at 723) this Court stated, " . . . Civil courts are bound to accept the decisions of the highest judicatories of a religious organization of higher polity on the manners of discipline, faith, internal organizations, or ecclesiastical rule, custom or law."

B. The Colorado Supreme Court Has Recognized This Court's Prior Decisions But Attempts to Avoid Them on its Own Created Exceptions

In *Van Osdol v. Vogt*, 908 P.2d 1122 (Colo. 1996) the Colorado Supreme Court stated, "The choice of a minister is an unique distillation of a belief system. Regulating that choice comes perilously close to regulating belief." "Whether the courts should intrude into ecclesiastical decisions regarding choice of a minister is an issue that bridges both religion clauses of the First Amendment, because it potentially involves governmental intrusion into both ecclesiastical and individual decision-making." "However, whether we look to Free Exercise Clause analysis or to Establishment Clause analysis, we find a church's choice of a minister is uniquely protected." "Because of the minister's unique role in the church, the appointment of a minister is inherently of prime ecclesiastical concern." All above *Id.* at 1126-1127. "The decision to hire or discharge a minister is itself

inextricable from religious doctrine." "Thus, the church's decision of who to hire as a minister necessarily involves religious doctrine." *Id.* at 1128. "The principle underlying the reasoning in all these cases is that the appointment of a minister is an expression of the beliefs of the church and the 'embodiment' of the religion." "In analyzing a church's choice of a minister, attempts to separate arguably impermissible discriminatory grounds for a decision from grounds stemming from the church beliefs excessively entangles a court with religion. Hence, the Establishment Clause insulates a religious institution's choice of a minister from judicial review." *Id.* at 1132-1133. "What we do hold is that a church's choice of who shall serve as its minister is inextricable related to religious belief and therefore invokes the protection of the First Amendment." *Id.* at 1134.

However, despite the Colorado Supreme Court's seemingly overwhelming words of understanding and support acknowledging this Court's pronouncements that a church's involvement with its clergy is a protected First Amendment right involving the very heart of religious belief and practice, at footnote 17 of *Van Osdol* (908 P.2d at 1132 and 1133) the Colorado Supreme Court continued to invade the very principle established by this Court on the Colorado Supreme Court's own created exception[1] by stating:

> "17. While claims for illegal hiring or discharge of a minister inevitably involved religious doctrine, that is not the case for a claim of negligent hiring of a minister. The claim of negligent hiring is brought after an employee has harmed a third party through his or her office of employment. An employer is found liable for negligent hiring if, at the time of hiring, the employer had reason to believe that hiring this person would create an undue risk of harm to others. *Connes v. Molalla Transp., System, Inc.*, 831 P.2d 1316, 1321 (Colo. 1992); Restatement (Second) of Agency § 213 cmt. d

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[1] *Destefano v. Grabrian*, 763 P.2d 275 (Colo. 1988) and *Moses v. Diocese of Colorado*, 863 P.2d 310 (Colo. 1993).

> (1958). Hence, the court does not inquire into the employer's broad reasons for choosing this particular employee for the position, but instead looks to whether the specific danger while ultimately manifested itself could have reasonably been foreseen at the time of hiring. This inquiry, even when applied to a minister employee, is so limited and factually based that it can be accomplished with no inquiry into religious beliefs. See *Moses v. Diocese of Colo.*, 863 P.2d 310, 320-21 (Colo. 1993) (holding that although courts must not become embroiled in interpreting or weighing church doctrine, a claim of negligent hiring of a minister is actionable because it does not require such interpretation or weighing of religious belief but instead is merely application of a secular standards to secular conduct), *cert. denied*, U.S. , 114 S.Ct. 2135, 128 L.Ed.2d 880 (1994)."[2]

Even the above "exception" created by the Colorado Supreme Court was violated in the present case by allowing the total invasion of the Rocky Mountain Conference' hiring, supervision, disciplining and discharge (retirement under severe restrictions) of Rev. Chambers to be minutely examined and second guessed before the jury in total defiance of the First Amendment rights of the Rocky Mountain Conference. In reality, Dianne Winkler was allowed to invade and conduct arbitrary second guessing of the church's "broad reasons for choosing" Rev. Chambers, the church's every act of "supervision" of Rev. Chambers in his career from 1953 to 1992 and she was even allowed to invade the church's entire disciplinary proceeding with arbitrary second guessing right down to criticizing before the jury the church's ultimately allowing Rev. Chambers to retire

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[2] Note in the present case, the allowed tort claims are not just negligent hiring but also negligent supervision and fiduciary duty. In addition, both *Destefano, supra,* and *Moses, supra,* allow additional tort claims of "outrageous conduct" and "vicarious liability by ratification" against churches as well as the above.

with severe restrictions which she somehow relates to her damages.

In addition, Dianne Winkler was allowed under the Colorado Supreme Court's "exceptions" to even claim a "fiduciary relationship" was somehow created with her by the Rocky Mountain Conference during the very processing of Rev. Chambers disciplinary proceedings under the Book of Discipline. This "fiduciary duty" to Dianne Winkler required she become the primary focus of the Conference's actions and the Book of Discipline, the Conference, Rev. Chambers, the United Methodist Church and all other women involved were to be secondary.[3] She was then permitted to speculate this "fiduciary duty" was breached because the Rocky Mountain Conference failed to provide her own self-defined ideas of what should have been done for her and what should have been done differently regarding Rev. Chambers' grievance process.

II. THE COLORADO STATE COURT HAS IDENTIFIED NO COMPELLING INTEREST TO JUSTIFY THE SUBSTANTIAL BURDEN ON THE ROCKY MOUNTAIN CONFERENCE OF THE UNITED METHODIST CHURCH RELIGIOUS ACTIVITY FOR PERMITTING DIRECT TORT CLAIMS.

In cases under the Free Exercise Clause, this Court has applied the compelling state interest test. *Sherbert v. Verner,* 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963), and *Wisconsin v. Yoder,* 406 U.S. 205, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972). The Religious Freedom Restoration Act, 42 U.S.C. § 2000bb also mandates the use of this test in Free Exercise cases. The compelling state interest requires a three-stage analysis: (1) whether the conduct in question is motivated by a sincerely held religious

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[3] In a subsequent conflicting ruling a separate three-judge division of the sixteen member Colorado Court of Appeals correctly held the Rocky Mountain Conference in a different case could not have a fiduciary duty to a complainant during a disciplining proceeding against a clergy under the Book of Discipline. See *Bohrer v. DeHart,* P.2d (Colo. App. 1996), cert. pending, copy attached in Appendix C pgs. 23a to 44a.

belief; (2) whether the state action infringes on the free exercise of religion; and (3) whether there is a state interest of sufficient magnitude to override the interest claiming protection under the Free Exercise Clause. *Wisconsin v. Yoder, supra,* 92 S.Ct. at 1532. The third stage of this analysis requires a balancing of interests: whether the state's interest is so compelling that the church's free exercise interest must give way. If an overriding state interest is demonstrated, the state must use the least intrusive means to protect that interest. *Cantwell v. Connecticut,* 310 U.S. 296 (1940); *McDaniel v. Paty,* 435 U.S. 618, 98 S.Ct. 1322, 55 L.Ed.2d 593 (1978); *Thomas v. Review Board,* 450 U.S. 707, 101 S.Ct. 1425, 67 L.Ed.2d 624 (1981); *Church of the Lukumi Babalu Aye. Inc. v. City of Hialeah, U.S. , 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993).*

The Colorado courts have entirely disregarded this test in cases of this type. The hiring, supervision, disciplining, and discharge (severely restricted retirement) of Rev. Chambers in this case by the Rocky Mountain Conference of the United Methodist Church pursuant to the Book of Discipline without question is motivated by a sincerely held religious belief. The state action of allowing tort claims of negligent hiring, negligent supervision and fiduciary duty infringes on the Conference's free exercise of religion. The Colorado Supreme Court so acknowledged in *Van Osdol, supra.* Thus, the only issue is whether the state interest in allowing tort claims is of sufficient magnitude to override the interest of the Rocky Mountain Conference under the Free Exercise Clause and, if so, what is the least intrusive means to protect that compelling interest. The Colorado courts have completely failed to even address this issue in this case.

There is no compelling state interest of sufficient magnitude to justify intrusion into the protected religious rights of a church to hire, supervise, discipline and discharge its clergy free from tort claims involving allegations of sexual misconduct of clergy which is without argument conduct out of the course and scope of a clergy's work. The asserted "compelling state interest" in this case is apparently to discourage sexual harassment of

women by clergy. The least intrusive means would obviously be to focus on the conduct itself. It is not necessary to restrict the United Methodist Church's free exercise of religion in the United Methodist Conference to prevent such conduct. The Rocky Mountain Conference of the United Methodist Church did not sexually harass any women and had no prior knowledge of Rev. Chambers alleged propensity to do so until the incident which ultimately led them to identify Dianne Winkler as one of several women who claimed such conduct by Rev. Chambers. Further, the United Methodist Church denomination had in place a fair structure in the Book of Discipline to deal with such serious complaints without allowing them to be ignored or turned into a clergy witch hunt. The method used by the Colorado court is not the least intrusive means to protect women from sexual misconduct of clergy. The least intrusive means is by direct action on the out of course and scope clergy conduct not the church's religious activity of selecting, supervising, disciplining and discharging its clergy.

In *Employment Division v. Smith,* 494 U.S. 872, 110 S.Ct. 1595, 108 L.Ed.2d 876 (1990), Justice Scalia, of this Court, writing for a plurality, stated that a neutral law of general applicability may be given effect, even though it has the incidental effect of burdening a free exercise of religion, without triggering the Compelling State Interest analysis. There the petitioner was denied unemployment compensation benefits after he was fired form his job for using peyote in Native American religious rituals. Under Oregon and federal law, peyote is a controlled substance, the use or possession of which is a criminal offense, but Smith argued that his use was constitutionally protected. Writing for a plurality, Justice Scalia conducted an analysis focusing on the fact that the criminal statutes prohibiting use or possession of peyote were neutral laws of general applicability, which were applicable cross the board, and did not depend on the religious context in which the defendant happened to be using peyote. Since this was a neutral law of general applicability, the state's

actions, in denying unemployment compensation benefits to Smith because he was fired for illegal conduct, was upheld.[4]

However, in the later case of *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah,* U.S. , 113 S.Ct. 2217, 124 L.Ed.2d 472 (1993), this Court acknowledged the holding of *Employment Division v. Smith,* but nevertheless returned to the Compelling State Interest Test, because the ordinances there in question were not "neutral laws of general applicability" as applied. Justice Kennedy noted that:

> "Facial neutrality is not determinative. The Free Exercise Clause, like the Establishment Clause, extends beyond facial discrimination. The Clause 'forbids subtle departures from neutrality,' *Gillette v. United States,* 401 U.S. 437, 452, 91 S.Ct. 828, 28 L.Ed.2d 168 (1971), and 'covert suppression of particular religious beliefs,' *Bowen v. Roy* (476 U.S. 693) at 703, 106 S.Ct. 2147, 90 L.Ed.2d 735 (1986) (opinion of Burger, C.J.). Official action that targets religious conduct for distinctive treatment cannot be shielded by mere compliance with the requirement of facial neutrality. The Free Exercise Clause protects against governmental hostility which is masked, as well as overt."

113 S.Ct. at 2227.

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[4] In the wake of *Employment Division v. Smith,* commentators expressed great consternation about the prospect that the *Smith* case might have effectively abolished the Compelling State Interest Test, and gelded the Free Exercise Clause. See, Case Note, *Employment Division v. Smith: A Great Step Backwards in Free Exercise Jurisprudence,* 1991 B.Y.U.L. Rev. 1331 (1991) and Case Note, *Employment Division v. Smith: Free Exercise Clause Loses Balance on Peyote,* 43 Baylor L. Rev. 577 (Winter 1991). See, also, *Miller v. Civil City of South Bend,* 904 F.2d 1081, 1102-1103 (7th Cir. 1990); *United States v. Philadelphia Yearly meeting of the Religious Soc. of Friends,* 753 F.Supp. 1300 (E.D. Pa. 1990); and *Minnesota v. Herschberger,* 462 N.W.2d 393 (Minn. 1990). In response to the concerns expressed about *Employment Division v. Smith,* Congress adopted the Religious Freedom Restoration Act of 1993, 42 U.S.C. § 2000bb, sometimes referred to as the "RFRA."

In *Wisconsin v. Yoder, supra,* this Court had earlier said that "A regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for governmental neutrality if it unduly burdens the free exercise of religion." 92 S.Ct. at 1536. However, there seems to have been speculations that *Employment Division v. Smith* applied anytime a law was facially neutral. *Church of the Lukumi Babalu Aye* indicates the contrary.

Tort claims for negligent hiring/supervision and fiduciary duty against the Rocky Mountain Conference of the United Methodist Church are not neutral laws of general applicability. Neutrality and general applicability are distinct and separate requirements. In *Church of the Lukumi Babalu Aye,* Justice Kennedy noted that these concepts are interrelated, and that a law which fails to satisfy one requirements will in all likelihood, fail to satisfy the other (113 S.Ct. at 2226), but failure to satisfy either requirement triggers a Compelling State Interest analysis. Neutrality is the first element. As stated above, neutrality on its fact may not be neutral as applied. "Improper targeting" of religious activity is an indication of non-neutrality, and the expressions of purpose associated with the enactment of a law may demonstrate improper targeting.[5] Here, the problem of applying these constitutional principles is complicated because we are dealing with common law causes of action rather than statutes. Nevertheless, the decisions handed down by the Colorado Supreme Court in *Destefano* and *Moses* themselves demonstrate this constitutionally impermissible targeting.

In *Destefano,* the Colorado court implicitly recognized that a cause of action for "clergy malpractice" would not be even *facially* neutral. Therefore, the court declined to recognize that cause of action. However, as a surrogate for "clergy malpractice," the court reinvented the established claim for "breach of fiduciary duty," lifting it out of its traditional context, where it

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[5] Note that, in evaluating whether the real object of the ordinances was to target conduct because it was religiously motivate, Justice Kennedy took guidance from equal protection cases. 113 S.Ct. at 2230-2231.

served to impose liability on defendants who misused their control over a plaintiff's financial affairs. The concept of fiduciary duties evolved to deal with situations where one person exercises control over the financial affairs of another. Fiduciary law developed to provide a "moral dimension to the body of law that regulates economic activity." N. Schaumann. *The Lender and Unconventional Fiduciary,* 23 Seton Hall L. Rev. 21 (1991). Even as to a true fiduciary, not all duties owed are "fiduciary" duties:

> "Finally, fiduciary duties do not include a duty of care. Fiduciaries often owe a duty of care to their beneficiaries, which in some, but not all, cases is more demanding than that owed the general public, **but not every duty owed by a fiduciary to a beneficiary is a 'fiduciary duty.'** It serves no useful purpose so to expand the idea of fiduciary duty. Although fiduciary status at times may be relevant to assessing the duty of care owed a beneficiary, the duty of care is defined and governed not by fiduciary law but by tort (and sometimes contract) law. Clarity of analysis is enhanced by maintaining this distinction. Tort law is no more 'fiduciary' than is tax law, although most fiduciaries are subject to both."

23 Seton Hall L. Rev. at pp. 30-31 (emphasis added). Disregarding these consideration, *Destefano* expanded breach of fiduciary duty for the purpose of imposing liability on religious organizations and clergy.

Aside from *Destefano v. Grabrian* and *Moses v. Diocese,* all the later Colorado fiduciary duty cases finding a fiduciary duty have likewise involved financial control See, e.g., *Rubenstein v. South Denver Nat'l Bank,* 762 P.2d 755 (1988), cert. den. (1989); and *Zick v. Krob,* 872 P.2d 1290 (Colo. App. 1993).

Thus, it is apparent that the traditionally narrow concept of breach of fiduciary duty was transformed in *Destefano* for the precise purpose of imposing liability on the Catholic Church based on its status as a religious organization and the priest based on his status as a Catholic priest who provided pastoral counseling. This transformed cause of action is now being used to get other religious organizations and clergy on their status as religious entities.

In *Moses v. Diocese,* defense counsel raised the argument that the manifestation of "breach of fiduciary duty" recognized in *Destefano v. Grabrian* was simply another way of denominating a claim for clergy malpractice. The Colorado Supreme Court rejected that argument, on the basis that the clergyman's liability for breach of fiduciary duty was unrelated to his "professional" status as a clergyman, which the court said would justify treating that claim differently from a claim for "clergy malpractice":

> "The fundamental difference between the two causes of action is the former is a breach of trust and does not require a professional relationship or a professional standards of care, while the latter is an action for negligence based on a professional relationship and a professional standard of care. In *Destefano,* we held the defendant owed a fiduciary duty to the plaintiff that 'was created by his undertaking to counsel [the plaintiff].' *Destefano v. Grabrian,* 763 P.2d 275, 284 (Colo. 1988). The position of trust occupied by the defendant, when coupled with his positive act of counseling the plaintiff, resulted in a duty to the plaintiff. The relevant common facts in Destefano and Tenantry's case are not the profession of the defendants; the relevant facts are that the defendants in both cases occupied a position of superiority, assumed a duty to act in good faith, and then breached their duty. In Colorado, breach of fiduciary duty is actionable, clergy malpractice is not. *Id.* at 384-86."

863 P.2d at 321, footnote 13 (emphasis supplied). However, just as Father Grabrian's "position of trust" in *Destefano* was his position as a Catholic priest, and the counseling he undertook was pastoral counseling, Bishop Frey's "position of trust" in the Moses case was his "superior position **as a counselor, a bishop, and a final arbiter of problems with the clergy.**" 863 P.2d at 322 (emphasis added). The court referred to Bishop Frey's "position of authority in the church," which gave him "the power to resolve conflicts in the church." Id. The court also referred to the plaintiff's belief that Bishop Frey "had the power to decide if she would lose her salvation. *Id.* The court also stated that, although the "clergy-parishioner" relationship is not necessarily a "fiduciary" relationship, it does "involved the type of interaction that creates trust and reliance," and ended with the statement "Courts have recognized the fiduciary nature of the clergy-parishioner relationship." *Id.*

Therefore, even though the black and white statement of the expanded cause of action for "breach of fiduciary duty" may suggest facial neutrality, when this tort cause of action is applied to religious organizations and clergymen, it is not neutral. When a religious organization and clergymen are sued for breach of fiduciary duty, it is their status as a religious entity and clergyman which allegedly gives rise to the existence of a fiduciary duty, and plaintiffs' counsel generally make the effort (as they did in this case) to establish the existence of a pastoral counseling relationship since that is the one context in which the Colorado Supreme Court has ostensibly found this new species of fiduciary duty. A civil claim for breach of fiduciary duty which grows out of that religious status cannot possibly constitute a neutral law of general applicability. As applied to the religious institution, the fiduciary duty is premised on its status as a church, and more particularly on its status as a church providing a process for clergy complaints. As applied to the individual defendant, the fiduciary duty is premised on his status as a clergyman, and more particularly on his status as a clergyman providing pastoral counseling. The fact that a stockbroker may be subject to breach of fiduciary duty in the course and scope of his employment for

churning his client's stock investments, or his employer as respondeat superior, or that a lawyer may be subject to breach of fiduciary duty for dissipating funds which he holds in trust for a client, or his firm as respondeat superior, does not make this new form of fiduciary law a "neutral law of general applicability" when it is used to impose liability only on a church because of its status as a religious body or on the individual clergy status **as a clergyman.**

Furthermore, it is critical to note that this cause of action for breach of fiduciary duty is not applied in the same manner to other types of defendants as to clergymen. In *Crystal Homes v. Radetsky,* 895 P.2d 1179, 1182 (Colo. App. 1995), the plaintiff tried to sidestep the requirement that a client suing a lawyer for professional malpractice must present expert testimony establishing a standard of care and the lawyer's breach thereof, by suing for breach of fiduciary duty, based on the alleged existence of a "confidential relationship between the parties independent of any lawyer-client relationship." Although the Court of Appeals acknowledged the *Moses* decision, it went on to say that "the foundation for any confidential or fiduciary relationship asserted here was necessarily based upon the alleged attorney-client status between the parties," since there was "no other basis alleged for plaintiff's asserted justifiable reposition of special trust or confidence in defendant." Thus, the court ruled that any duties owed by the defendant attorney "would be measured against standards applicable to attorneys." Thus, when the plaintiff is making a claim against his attorney, based on his status as an attorney, the plaintiff is relegated to a legal malpractice claim. He cannot transform this into a "breach of fiduciary duty claim," even though his evidence shows the requisite "justifiable reposition of special trust or confidence" in the defendant. When the defendant is a church or clergyman, however, the plaintiff is allowed to invoke the transformed cause of action for "breach of fiduciary duty," precisely because no "clergy malpractice" claim is available against such defendants. This demonstrates that the

transformed "breach of fiduciary duty claim" has been appropriated to accomplish indirectly what the Colorado court recognized it could not accomplish directly. As Justice Kennedy recognized in *Church of Lukumi Babalu Aye,* "the effect of a law in its real operation is strong evidence of its object." 113 S.Ct. at 2228.

Lukumi Babalu Aye also held that one ordinance was not neutral because it represented "a system of 'individualized governmental assessment of the reasons for the relevant conduct.' " 113 S.Ct. at 2229. Similarly, the essence of these common law claims is to establish a system of individualized governmental assessment of the reasons for the defendant's conduct.[6]

The cause of action for "breach of fiduciary duty," as applied to impose liability on clergymen and religious institutions, also fails as a law of "general applicability." In *Employment Division v. Smith,* the statute prohibiting the use or possession of peyote was considered to be a law of general applicability precisely because it applied to everyone. When the peyote statute was applied to Smith, it was not applied to him because of his status as an adherent of a native American religion. The fact that the application of this general law burdened Smith's religious practice was treated as an "incidental effect." In this case, the transformed cause of action for "breach of fiduciary duty," on its

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[6] It is worth noting that *Lukumi Babalu Aye's* neutrality analysis also borrowed a variant of the "least restrictive means" test, finding "significant evidence of the ordinances' improper targeting of Santeria sacrifice in the fact that they proscribed more religious conduct than is necessary to achieve their stated ends." 113 S.Ct. at 2229. This court later noted that "narrower regulation would achieve the city's interest in preventing cruelty to animals. . . . [R]egulation of condition and treatment, regardless of why an animal is kept, is the logical response to the city's concern, not a prohibition on possession for the purpose of sacrifice. . . . If the city has a real concern that other methods are less humane, . . . the subject of the regulation should be the method of slaughter itself not a religious classification that is said to bear some general relation to it." 113 S.Ct. at 2230. "[T]he ordinances suppress more religious conduct than is necessary in order to achieve the legitimate ends asserted in their defense." 113 S.Ct. at 2231. This brings the analysis full circle.

face does not apply to everyone, but only to certain persons or religious institutions considered to be in a superior position in whom trust has been reposed. Furthermore, as applied to impose liability on church or clergymen, it is precisely their status as churches or clergymen which triggers the liability.

In Lukumi Babalu Aye, Justice Kennedy concluded that it was not necessary there to "define with precision the standard used to evaluate whether a prohibition is of general application," because the City of Hialeah's ordinances were clearly too under inclusive to qualify. 113 S.Ct. at 2232. The court held that, to the extent the city might have had legitimate interests in protecting the public health and preventing cruelty to animals, the ordinances should have been directed at conduct contrary to these interests without regard for who might engage in that conduct. Because they were tailored to "rituals" and "sacrifices," the ordinances were not "generally applicable." In this case, the transformed cause of action for "breach of fiduciary duty," is not generally applicable on its face, and it is certainly selectively applied to clergymen and religious institutions. Conduct-oriented government action (such as a criminal assault statute or the civil tort of battery) may be "generally applicable," but this status-based claim is not.

Thus, the transformed cause of action for "breach of fiduciary duty" recognized and applied in *Destefano v. Grabrian* and *Moses v. Diocese* is neither a neutral law nor a law of general applicability. That requires that its application to the Rocky Mountain Conference be strictly scrutinized under the Compelling State Interest Test, given the assumed religious motivation. However, as noted, the Colorado courts have completely ignored the compelling State Interest Test and have not even addresses its requirements.

III. A DECISION OF THIS COURT IS NECESSARY IN ORDER TO HAVE COLORADO FOLLOW THIS COURT'S PRIOR RULING AS THE MAJORITY OF OTHER COURTS HAVE DONE

The issue that a church when hiring, supervising, disciplining and discharging clergy is inextricable involved in religious activity protected by the First Amendment of the United State Constitution and not subject to tort claims has been litigated extensively in the past few years in numerous jurisdictions. The overwhelming majority of courts who have considered this issue have been held no tort claims are allowed. A few jurisdictions have considered narrow exceptions. Colorado has been the most liberal and permits wide ranging exceptions.

A. Other Jurisdiction Have Followed This Court's Ruling.

In *Roman Catholic Bishop v. Superior Ct.,* 50 Cal. Rptr. 2d 399 (Cal. App. 4 Dist. 1996), where a priest sexually molested a child, the church was granted a summary judgment on a writ of mandamus. The court stated on negligent supervision "The vow of celibacy by clergy is a religious decision based upon religious belief; it does not create a civil duty" and "under the free exercise clause of the First Amendment, the state may not compel affirmation of a religious belief nor impose requirements based on belief in any religion" *Id.* 406. On negligent hiring, the court stated "There is nothing in the record to indicate [the priest] had a criminal history or had been previously implicated in sexual abuse of a minor. Thus the church could not have had antecedent knowledge of [the priest] purported criminal dangerousness" and "Here there was no compelling state interest to require the employer to investigate the sexual practice of its employee." *Id.* 404.

In *Pritzloff v. Archdiocese of Milwaukee,* 533 N.W.2d 780 (Wis. 1995), where a priest had a sexual relationship with a woman, the court held claims of negligent hiring, retaining, training and supervision against the church were barred by the First Amendment stating, " . . . We conclude that the First Amendment to the United States Constitution prevents the courts of this state from determining what makes one competent to serve as a Catholic priest since such a determination would require interpretation of church canons and internal church policies and practices." *Id.* 790.

In *Isely v. Capuchin Province,* 880 F.Supp. 1138 (E.D. Mich. 1995), where a student alleged sexual abuse by priests, the dismissal of a negligent hiring claim against the church was upheld. The court stated, "It is well-settled that when a court is required to interpret Canon Law or internal church policies and practices, the First Amendment is violated because such judicial inquiry would constitute excessive government entanglement with religion." *Id.* 1150.

In *Roppolo v. Moore,* 644 S.2d 206 (La. App. 4th Cir. 1994) (cert. denied 650 S.2d 253), where a husband's action was refused against a priest and diocese on a wife's suicide after an adulterous affair with the priest, citing *Serbian v. Orthodox Diocese, supra; Schmidt v. Bishop,* 779 F.Supp. 321 (S.D.D.N.Y. 1991); *Nally v. Grace Community Church of the Valley,* 253 Cal. Rptr. 97, 763 P.2d 948 (Cal. 1988); and *Young v. Northern Ill. Conference of the United Methodist Church,* 818 F.Supp. 1206 (N.D. Ill. 1993), 21 F.3d 184 (7th Cir. 1994) where the court held, "when it comes to establishing the criteria for determining and then making the determination regarding who should preach from the pulpit, comfort the dying, visit the imprisoned, discuss morality, set an example for all to see, explain church dogma, expound on the meaning of faith hope and charity, and carry on the mission of the church, *such decisions* are wisely and *constitutionally* left to the wearers of the religious rather than the judicial robe. It therefor become prudent to avoid the temptation to get involved in religious affairs of the defendants; courts should avoid questions pertaining to a church's governance or hierarchy." (Emphasis supplied.)

In *Dausch v. Ryske,* 52 F.3d 1425 (7th Cir. 1994), aff'd in part and rev'd in part, 1993 WL 34873 (N.D. Ill. 1993), a minister started a sexual relationship during counseling. The claims against the church were dismissed by the trial court, including negligent hiring, negligent supervision, and breach of fiduciary duty. The Circuit affirmed, holding that claims based on "any inquiry into the policies and practices of church defendants in

hiring or supervising their clergy is barred by the First Amendment because it might foster excessive state entanglement with religion," *Id.* The court cited the earlier case of *Schmidt v. Bishop,* 779 F.Supp. 321 (S.D.D.N.Y. 1991), for its holding that, "in analyzing and defining the scope of fiduciary duty owed persons by their clergy, the court would be confronted with the same constitutional difficulties encountered in articulating the generalized standard of care for a clergyman (church) required by the law of negligence."

In *Dausch v. Ryske, supra,* the court further stated "Finally, the court dismissed Mrs. Dausch's counts concerning the church defendants' negligent hiring, training, and supervision of Ryske because adjudication of such claims would foster excessive state entanglement with religion."

In *Bladen v. First Presbyterian Church,* 857 P.2d 789 (Okla. 1993), in an adulterous affair of minister with wife while providing marital counseling to the couple, the court held counseling is solely a religious activity rejecting specifically *Destefano, supra.*

In *Schieffer v. Catholic Archdiocese of Omaha,* 508 N.W.2d 907 (Neb. 1993) where there was a sexual relationship between a priest and parishioner while counseling, the court distinguishing in part *Destefano, supra,* and rejected the remaining premises.

B. A Few Jurisdictions Have Authored Narrow Exceptions Contrary to This Court's Ruling.

The Ohio courts have rejected all tort claims against religious organizations except negligent hiring, contrary to this Court's ruling, but, different than Colorado trial courts, require the specific pleading and proof of facts that the person hired had a past history which had a nexus to the complained of conduct. *Byrd v. Faber,* 565 N.E.2d 584 (Ohio 1991) where the court noted "If the state becomes involved in assessing the adequacy of these standards, serious entanglement problems may exist under the First Amendment." In *Mirick v. McClellan,* 1993 W.L. 156303 (Ohio App. 1 Dist. 1994) the court dismissed plaintiff's claims of inadequate oversight of a molester for lack of adequate pleading

of the Episcopal Church's pre-assault knowledge of the persons' propensities. Likewise, in *Jones by Jones v. Trane,* 591 N.Y.S.2d 927 (Sup. 1992) in a case involving a suit by a mother and son against a priest and church for the priest's alleged molestation of the son held the church is only exposed to liability where there was a sufficient showing of notice of perverted proclivities, citing *Byrd, supra.* In Colorado trial courts, experienced has shown not only do plaintiffs not have to plead conduct showing a logical nexus to the complained of sexual misconduct but, as in the present case, can bring in anything and everything about the hiring, supervision and discharge of the minister whether or not it bears any nexus to the underlying alleged sexual harassment claimed such as by Ms. Winkler and denied by Rev. Chambers in this case.

CONCLUSION

The Colorado court has allowed tort claim against a church when engaged in hiring, supervising, disciplining and discharging clergy despite this court's holding such religious activity is inextricable involved with and protected by the First Amendment. The Colorado court has totally ignored this court's requirement of the need to establish a compelling interest to justify placing a severe burden on religious organizations exercise of religion.

Respectfully submitted,

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